

Maguire
RUM-1

DECISION



THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548

FILE: B-217563

DATE: June 24, 1986

MATTER OF: Gordon L. Redmond, Sp5, USA, Retired
(Deceased)

DIGEST:

Sister-in-law of deceased member claims accumulated retired pay of member as legal representative of his estate. Her claim is doubtful since the will was probated in Pennsylvania although evidence in the record indicates that member and his wife were domiciled in New York. In addition, the will was executed in June 1967, a year after the member was permanently hospitalized in the Veterans Administration medical facility in New York, and after he had been determined to be mentally incompetent by the Veterans Administration and a custodian had been appointed for him. He was never found to have regained competency before his death in 1982. Therefore, the claim is of doubtful validity and may not be allowed.

This action is in response to a request for reconsideration of our Claims Group's December 5, 1985 denial of the claim of Helen E. Miniafee, in the matter of Gordon L. Redmond, deceased.^{1/} Mrs. Miniafee is claiming accumulated retired pay of Gordon L. Redmond as the legal representative (and sole beneficiary) of the estate. It is our view that the claim is of doubtful validity and thus may not be allowed.

Background

The late Gordon L. Redmond was placed on the Army's permanent disability retired list on August 7, 1965, with a disability rating of 90 percent. At that time Army records indicated that his address and place of retirement were Buffalo, New York. Specifically, a retired pay document submitted by the Army indicates that Mr. Redmond wished to have his retired pay mailed to 83 Northhampton Street, Buffalo, New York, and his Army "Record of Emergency Data" form, completed while he was on active

^{1/} The request for reconsideration was made by Thomas J. Kalman, Esq., Uniontown, Pennsylvania, acting on behalf of Mrs. Miniafee.

duty on February 10, 1965, stated that Buffalo, New York, had been his home address on the date of his last entry on active duty, November 25, 1963.

On June 28, 1966, Mr. Redmond was admitted to the Veterans Administration hospital in Buffalo, New York. On June 29, 1966, the Veterans Administration determined that Mr. Redmond was mentally incompetent and the Director of the Veterans Administration Medical Center in Buffalo, New York, was appointed his legal custodian. 38 U.S.C. § 3203(b)(3). Mr. Redmond remained hospitalized until his death and was never found to be competent.

The record includes a copy of a joint will purportedly executed by Gordon Redmond and Leah Redmond, his wife, which states that they are "of Uniontown, Fayette County, Pennsylvania." It is dated June 15, 1967, almost a year after Mr. Redmond was determined by the Veterans Administration to be incompetent. The terms of the will provide that if one spouse died all the property in the estate would go to the other spouse. If both spouses were deceased, the property was left to Helen Miniafee, a sister of Leah Redmond. Each spouse designated the other as executor/executrix of the estate, but Mrs. Miniafee was named as executrix if both spouses were deceased.

On June 11, 1968, Mrs. Redmond died in Buffalo, New York. The death certificate shows her state of residence as New York and her home address is the same Buffalo, New York, address listed by Mr. Redmond as his home mailing address upon his retirement. Mr. Redmond remained in the Veterans Administration hospital as a patient until his death on February 27, 1982. His death certificate lists New York as his state of residence. On March 8, 1982, Mrs. Miniafee presented the will to the Register of Wills of Fayette County, Pennsylvania, and was granted letters testamentary.

As a member of the armed forces retired for physical disability, Mr. Redmond was entitled to retired pay. See 10 U.S.C. § 1201, et seq. However, his retired pay was waived, effective May 1, 1966, in favor of greater monetary benefits from the Veterans Administration. See 38 U.S.C. § 3105. During certain periods of his hospitalization subsequent to his wife's death, Mr. Redmond was not eligible for payment of benefits from the Veterans Administration because he was a widower with no children, he was being furnished hospital treatment and care by the United States, and his estate exceeded \$1,500. If he had been found competent at some point prior to his death, the

veterans benefits would have been payable to him 6 months after a finding of competency. However, since he died without regaining competency, the veterans benefits are not payable. See 38 U.S.C. § 3203(b). Since the right to receive the withheld veterans benefits unconditionally terminated upon Mr. Redmond's death, his waiver of retired pay for the period covered by such benefits is considered ineffective, and the right to retroactive retired pay then accrued. The retired pay then became payable pursuant to 10 U.S.C. § 2771. 49 Comp. Gen. 315 (1969). The Army reports that Mr. Redmond's total unpaid retired pay which accrued between February 1, 1968, and February 27, 1982, amounts to \$67,990.45.^{2/}

Mrs. Miniafee presented a claim to the Army as administrator of Mr. Redmond's estate for Mr. Redmond's accrued retired pay. Due to the complications of the case the claim was forwarded to our Claims Group as a doubtful claim, and the Claims Group disallowed the claim.

Discussion and Analysis

Section 2771, title 10, United States Code, provides for the settlement of the accounts of a deceased member of the armed forces. Payment of the amount due the deceased member is to be paid to the individual highest on the list of individuals named in the statute who is alive at the death of the member. They are, in order of preference: a designated beneficiary, a surviving spouse, children and their descendants, parents, a legal representative, or a person entitled under the laws of the domicile of the deceased member. Mrs. Miniafee has made a claim as the legal representative of the estate. The Army asked whether payment could be made since there is a question regarding her status as the legal representative of the estate.

We have long held that the United States will authorize payments to the estate only if there is a duly appointed legal representative or administrator appointed by the proper court of the jurisdiction where the decedent was domiciled at the time of his death. See 33 Comp. Gen. 346 (1954). See also 52 Comp. Gen. 113 (1972). Since there is doubt about the validity of the

^{2/} It appears that under applicable statutes in effect during the period one-half the retired pay accruing from February 1, 1968, through July 31, 1972, and the full amount accruing from August 1, 1972, through February 27, 1982, would be payable upon Mr. Redmond's death. 38 U.S.C. § 3203(b)(1) (1964), and 38 U.S.C. § 3203(b)(1) (1982).

will, it is our view that under the circumstances, Mrs. Miniafee's position as legal representative is too uncertain to allow payment of the claim.

As pointed out by the Army, the majority of evidence in the record presented indicates that the Redmonds were domiciled in Buffalo, New York. Mrs. Miniafee asserts that they were domiciled in Pennsylvania, indicating that they owned real estate there, where they resided, and that they had gone to visit in Buffalo, New York, when Mr. Redmond suffered a stroke and heart attack, and was hospitalized. Other than her assertions, there is nothing in the record which indicates that the Redmonds were domiciled anywhere but New York, although the record shows that Mrs. Miniafee is domiciled in Uniontown, Pennsylvania, and that she registered the will and received letters testamentary in Pennsylvania. Thus, it is unclear whether the will was probated in the state where the testator was domiciled, and there is some question whether the will was probated in the proper jurisdiction.

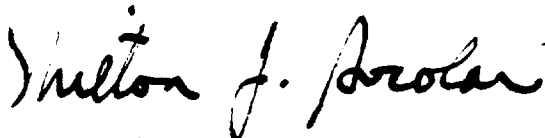
What renders Mrs. Miniafee's claim even more doubtful, however, is the fact that prior to the time Mr. Redmond purportedly executed the will in 1967, he had been determined to be mentally incompetent by the Veterans Administration and that a legal custodian had been appointed for him. That determination was made in 1966, 1 year before the date of the will, and the determination remained in effect through the date of his death in 1982. Since Mr. Redmond remained hospitalized and incompetent in Buffalo, New York, during the period from 1966 to 1982, it appears doubtful that he was competent to make a will in 1967.

The burden of proof is on the claimant in each case to establish his or her right to payment. Where the record before us contains a dispute of fact which renders the claim of doubtful validity, and the dispute cannot be resolved without an adversarial proceeding, the claimant has not met his burden and it has been the longstanding practice of this Office to disallow the claim and allow the claimant to pursue his remedy in the appropriate forum.

In the present case, the record before us contains disputes which cannot be resolved without an adversarial proceeding and which require determinations to be made which are not within the jurisdiction of our Office, such as a determination of competency

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of the testator. Thus, we find that the claimant has not met her burden and we must disallow the claim. The action of our Claims Group is, therefore, sustained.

for 
Comptroller General
of the United States